

REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on January 8, 2009, and the references cited therewith.

Claims 1, 12, 22, 30, and 36 are amended, claims 2-4 are canceled, and no claims are added; as a result, claims 1 and 5-38 are now pending in this application.

Information Disclosure Statement

Applicant respectfully requests that a copy of the 1449 Form, listing all references that were submitted with the Information Disclosure Statement filed on December 16, 2003; May 25, 2005; June 1, 2005; and October 7, 2005, marked as being considered and initialled by the Examiner, be returned with the next official communication.

§ 101 Rejection of the Claims

Claims 1-21 were rejected under 35 USC § 101 because there was no machine tied to the method along with no physical transformation being produced.

Independent claim 1 was amended to recite in part, "recording activation of the sensor on a computing device in communication with the sensor; determining a behavior routine of the individual based on recorded activations of the sensor; analyzing the recorded sensor activations with the computing device to determine a behavior routine".

Independent claim 12 was amended to recite in part "recording data counts from sensors activated by an individual during a time period on a computing device in communication with the sensors; identifying statistical changes in the data counts relative to expected data counts during the time period with the computing device".

As such, the methods recited in independent claims 1 and 12 are now tied to a particular machine, and Applicant respectfully requests reconsideration and

withdrawal of the § 101 rejection of independent claims 1 and 12, as currently amended, as well as those claims that depend therefrom.

Claims 30-38 were rejected under 35 USC § 101 because the claims were directed to a system of monitoring activity, but do not claim any structural, hardware components other than sensors, therefore, not encompassing a system in its entirety.

Independent claim 30 includes a system to monitor activity, comprising: a sensor, a receiver, a tabulation unit, an analysis unit, and a contacting unit. Independent claim 36 includes a device for monitoring activity, comprising: a receiver, a processing unit, and a contacting unit. The system of claim 30 and the device of claim 36 claim the structural and hardware components of the system and device listed above, therefore, Applicant respectfully requests reconsideration and withdrawal of the § 101 rejection of independent claims 30 and 36, as well as those claims that depend therefrom.

§ 102 Rejection of the Claims

Claims 36 and 37 were rejected under 35 USC §102(b) as being anticipated by David (U.S. Patent No. 5,544,649). Applicant respectfully traverses the rejection as follows.

Applicant's independent claim 36, as currently amended, presently recites:

- a receiver to receive activation signals from a sensor activated by an individual during activities of daily living;
- a processing unit to tabulate the received signals; and
- a contacting unit to initiate contact with a third party selected from a hierarchical list of third party contacts based on a defined level of change in a behavior routine when directed by the processing unit.

In contrast, the David reference appears to teach monitoring a patient at a remote site from a central station by means of interactive visual communications techniques and devices. (col. 1, lines 15-20). The David reference appears to teach an interactive camera setup between an individual and a central station to communicate. (col. 4, lines 60-68). Also, David appears to teach the monitoring of vital signs. (col. 5, lines 1-6).

The David reference appears to go on to recite that the central station can have an alarm mechanism to alert the staff to any aberration in vital signs or to communicate the data indicating aberrations in vital data to emergency care agencies, physicians, and social workers, etc. (col. 7, lines 55-61). The David reference does not appear to teach a receiver to receive activation signals from a sensor activated by an individual during activities of daily living, a processing unit to tabulate the received signals, and a contacting unit to initiate contact with a third party selected from a hierarchical list of third party contacts based on a defined level of change in a behavior routine when directed by the processing unit, as recited in amended independent claim 36.

As such, Applicant respectfully submits that the David reference does not teach each and every element and limitation of independent claim 36, as currently amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 102 rejection of independent claim 36, as currently amended, as well as those claims that depend therefrom.

§103 Rejection of the Claims

Claims 1-5, 8, and 11 were rejected under 35 USC § 103(a) as being unpatentable over David (U.S. Patent No. 5,544,649) in view of Official Notice. Applicant respectfully traverses the rejection as follows.

Applicant's independent claim 1, as currently amended, presently recites:

monitoring a sensor activated by an individual;
recording activation of the sensor on a computing device in communication with the sensor;
determining a behavior routine of the individual based on recorded activations of the sensor;
analyzing the recorded sensor activations with the computing device to determine a behavior routine;
identifying a change in the behavior routine based on the analysis of the recorded sensor activations; and
initiating contact to a third party on a hierarchical list of third party contacts in response to identifying the change in the behavior routine, wherein the third party on the hierarchical list to contact is selected based on a level of change in the behaviour routine.

In contrast, the David reference appears to teach monitoring a patient at a remote site from a central station by means of interactive visual communications techniques and devices. (col. 1, lines 15-20). The David reference appears to teach an interactive camera setup between an individual and a central station to communicate. (col. 4, lines 60-68). Also, David appears to teach the monitoring of vital signs. (col. 5, lines 1-6).

On Pages 6 and 7 of the Office Action from January 1, 2009, the Examiner states that "David discloses 'selecting a third party based on the level of change in the behaviour routine' (see at least column 2, lines 6-11 and 18-19; column 7, lines 55-61)." Column 7, lines 55-61 of David recites "this central station is preferably equipped with alarm mechanisms to alert the staff to any aberration from the expected. The central station further includes apparatus for the communication of data to all authorities involved in the wide spectrum of the patient's needs, e.g., emergency care agencies, the patient's physician, nursing services, social workers, etc."

The David reference appears to teach contacting others with the central station, but the David reference does not appear to teach initiating contact to a third party on a hierarchical list of third party contacts in response to identifying the change in the behavior routine, wherein the third party on the hierarchical list to contact is selected based on the level of change in the behaviour routine, as recited in amended independent claim 1.

As such, Applicant respectfully submits that the David reference and the Official Notice, independently or in combination, do not teach or suggest each and every element of Applicant's independent claim 1, as amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection of independent claim 1, as well as those claims that depend therefrom.

Claims 6, 7, 9, 10, 22-35, and 38 were rejected under 35 USC § 103(a) as being unpatentable over David (U.S. Patent No. 5,544,649) in view of Official

Notice and in view of Nichols (U.S. Patent No. 5,330,513). Applicant respectfully traverses the rejection as follows.

Claims 6, 7, 9, and 10 depend from independent claim 1. As described above, Applicant respectfully submits that independent claim 1, as currently amended, is in condition for allowance. Applicant respectfully submits that the Nichols reference does not cure the deficiencies of the David reference. That is, Applicant respectfully submits that the Nichols reference does not teach or suggest, monitoring a sensor activated by an individual, recording activation of the sensor on a computing device, determining a behavior routine of the individual based on recorded activations of the sensor, analyzing the recorded sensor activations with the computing device to determine a behavior routine, identifying a change in the behavior routine based on the analysis of the recorded sensor activations, and initiating contact to a third party on a hierarchical list of third party contacts in response to identifying the change in the behavior routine, wherein the third party on the hierarchical list to contact is selected based on the level of change in the behaviour routine.

As such, Applicant respectfully requests reconsideration and allowance of dependent claims 6, 7, 9, and 10.

With respect to independent claims 22 and 30, Applicant's independent claim 22, as currently amended, presently recites:

- sensing data counts associated with an activity of daily living for an individual;
- determining a statistical change in the data counts relative to expected data counts for the activity of daily living;
- identifying when the statistical change in the data counts relative expected data counts exceed a statistical threshold value;
- selecting a third party on a hierarchical third party list based on the activity of daily living for which the statistical change in the data counts relative expected data counts exceed the statistical threshold value and a level of statistical change in the data counts; and
- initiating automated contact to the third party on the hierarchical third party list when the statistical based change exceeds the statistical threshold value.

And independent claim 30, as amended, presently recites:

- a receiver to receive signals, indicating that the sensor has been activated;
- a tabulation unit to tabulate the number of received signals;
- an analysis unit to analyze the tabulated signals to determine a behavior routine and identify changes in the behavior routine; and
- a contacting unit to initiate contact with a third party selected from a hierarchical list of third party contacts when the analysis unit identifies a defined level change in the behavior routine.

In contrast, the David reference appears to teach monitoring a patient at a remote site from a central station by means of interactive visual communications techniques and devices. (col. 1, lines 15-20). The David reference appears to teach an interactive camera setup between an individual and a central station to communicate. (col. 4, lines 60-68). Also, David appears to teach the monitoring of vital signs. (col. 5, lines 1-6).

On Pages 6 and 7 of the Office Action from January 1, 2009, the Examiner states that "David discloses 'selecting a third party based on the level of change in the behaviour routine' (see at least column 2, lines 6-11 and 18-19; column 7, lines 55-61)." Column 7, lines 55-61 of David recites "this central station is preferably equipped with alarm mechanisms to alert the staff to any aberration from the expected. The central station further includes apparatus for the communication of data to all authorities involved in the wide spectrum of the patient's needs, e.g., emergency care agencies, the patient's physician, nursing services, social workers, etc."

The David reference appears to teach contacting others with the central station, but the David reference does not appear to teach selecting a third party on a hierarchical third party list based on the activity of daily living for which the statistical change in the data counts relative expected data counts exceed the statistical threshold value and the level of statistical change in the data counts; and initiating automated contact to the third party on the hierarchical third party list when the statistical based change exceeds the statistical threshold value, as recited in amended independent claim 22. Nor does David teach a contacting unit to initiate

contact with a third party selected from a hierarchical list of third party contacts when the analysis unit identifies a defined level change in the behavior routine, as recited in amended independent claim 30.

Also, the applicant respectfully submits that the Nichols reference does not cure the deficiencies of the David reference. The Nichols reference appears to teach operating software for adjusting the pacing rate of pacemaker and the derivation of correct sensor gain values for each. (col. 7, lines 11-18). Nichols does not teach contacting a third party from a hierarchical list of third party contacts.

As such, Applicant respectfully submits that the Dwight reference, the Official Notice, and the Nichols reference, independently or in combination, do not teach or suggest each and every element of Applicant's independent claims 22 and 30, as amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection of independent claims 22 and 30, as well as those claims that depend therefrom.

Claim 38 depends from independent claim 36. As described above, Applicant respectfully submits that independent claim 36, as currently amended, is in condition for allowance. Applicant respectfully submits that the Nichols reference does not cure the deficiencies of the David reference. That is, Applicant respectfully submits that the Nichols reference does not teach or suggest, a receiver to receive activation signals from a sensor activated by an individual during activities of daily living, a processing unit to tabulate the received signals, and a contacting unit to initiate contact with a third party selected from a hierarchical list of third party contacts based on a defined level of change in a behavior routine when directed by the processing unit.

As such, Applicant respectfully requests reconsideration and allowance of dependent claim 38.

Claims 12-21 were rejected under 35 USC § 103(a) as being unpatentable over Nichols (U.S. Patent No. 5,330,513) in view of David (U.S. Patent No.

5,544,649) and in view of Official Notice. Applicant respectfully traverses the rejection as follows.

Applicant's independent claim 12, as currently amended, presently recites:

recording data counts from sensors activated by an individual during a time period on a computing device in communication with the sensors; identifying statistical changes in the data counts relative to expected data counts during the time period with the computing device; and initiating automated contact to a third party on a hierarchical third party list identified by the individual when a statistical change exceeds a statistical threshold value, wherein the third party on the hierarchical list to contact is selected based on a level of statistical change.

The Nichols reference appears to teach operating software for adjusting the pacing rate of pacemaker and the derivation of correct sensor gain values. (col. 7, lines 11-18). The Nichols reference does not appear to teach initiating automated contact to a third party on a hierarchical third party list identified by the individual when a statistical change exceeds a statistical threshold value, wherein the third party on the hierarchical list to contact is selected based on the level of statistical change, as recited in independent claim 12.

Also, the applicant respectfully submits that the David reference does not cure the deficiencies of the Nichols reference. The David reference appears to teach monitoring a patient at a remote site from a central station by means of interactive visual communications techniques and devices. (col. 1, lines 15-20). The David reference appears to go on to recite that the central station can have an alarm mechanism to alert the staff to any aberration in vital signs or to communicate the data indicating aberrations in vital data to emergency care agencies, physicians, and social workers, etc. (col. 7, lines 55-61).

As such, Applicant respectfully submits that the Nichols reference, the David reference, and the Official Notice, independently or in combination, do not teach or suggest each and every element of Applicant's independent claim 12, as amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the

§ 103 rejection of independent claim 12, as well as those claims that depend therefrom.

The Examiner has taken Official Notice to a number of items in the rejection of some of the dependent claims discussed in the Office Action of January 8, 2009. Applicant has not directly addressed the Examiner's Official Notices in this response as Applicant believes that independent claims to be allowable, however, Applicant reserves the right to argue that use of Official notice for these rejections is improper at a later date and to request references that teach the language recited in the Official Notices.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's below listed attorney at (612) 236-0121 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this correspondence is being electronically filed with the United States Patent and Trademark Office on this 07 day of Apr., 2009.

Alison L. Subendran
Name

[Signature]
Signature

Respectfully Submitted,
Kyle S. Nelson, et al.

By Applicants' Representatives,
Brooks, Cameron & Huebsch, PLLC
1221 Nicollet Avenue, Suite 500
Minneapolis, MN 55403

By: [Signature]
Jeffery L. Cameron
Reg. No. 43,527

Date: 4/8/09